

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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The Minutes

October 25, 2004

At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Blease, Associate Justice; Morrison, Associate Justice; Butz, Associate Justice; and Facey, bailiff.

C044400 O'CONNELL v. CITY OF STOCKTON et al.

Cause called. Mark T. Clausen argued for appellant. Joseph M. Quinn argued for respondent. Cause submitted.

At 10:04 a.m., the court recessed. At 10:06 a.m., the court reconvened with Butz, Associate Justice; Hull, Associate Justice; and Robie, Associate Justice.

C042423 THE PEOPLE v. MUHAMMAD

Cause called. Kenny N. Giffard argued for appellant. Aaron R. Maguire, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:16 a.m., the court recessed. At 10:19 a.m., the court reconvened with Sims, Associate Justice; Hull, Associate Justice; and Butz, Associate Justice.

C044467 HARRISON v. YUBA CITY RACQUET CLUB et al. and JACOBY

Cause called. Phillip A. Cooke argued for appellant. Roland Iverson argued for respondents Yuba City Racquet Club et al. Elizabeth S. Mancini argued for respondent Jacoby. Cause submitted.

At 10:38 a.m., the court recessed. At 10:44 a.m., the court reconvened with Davis, Associate Justice; Morrison, Associate Justice; and Robie, Associate Justice.

C045382 CORTES v. CHANG et al.

Cause called. Reginald A. Dunn argued for appellant. Stephen J. Mackey argued for respondent. Cause submitted.

At 10:52 a.m., the court recessed. At 10:58 a.m., the court reconvened with Hull, Associate Justice; Robie, Associate Justice; and Butz, Associate Justice.

C043321 MILLER v. RODGERS, INC.

Cause called. Brendon Ishikawa argued for appellant. Thomas S. Knox argued for respondent. Cause submitted.

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October 25, 2004, continued

At 11:16 a.m., the court recessed until 9:30 a.m., Monday, November 22, 2004.

- C044110 THE PEOPLE v. ARBACAUSKAS (Certified for Publication)**
The order denying the People's motion to reinstate the criminal complaint is affirmed.
BLEASE, Acting P.J.
We concur: Sims, J.
 Butz, J.
- C046745 In re E.M.; SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES v. RENEE B. (Not for Publication)**
The order terminating appellant's parental rights is affirmed.
ROBIE, J.
We concur: Sims, Acting P.J.
 Morrison, J.

October 26, 2004

- C043689 THE PEOPLE v. RUMSEY (Not for Publication)**
The judgment is reversed.
HULL, J.
We Concur: Raye, Acting P.J.
 Robie, J.
- C044518 THE PEOPLE v. MCKINNIE (Not for Publication)**
The judgment is affirmed.
SCOTLAND, P.J.
We Concur: Raye, J.
 Robie, J.
- C044938 THE PEOPLE v. ELLIS (Not for Publication)**
The judgment is affirmed.
ROBIE, J.
We Concur: Sims, Acting P.J.
 Nicholson, J.
- C045749 THE PEOPLE v. SCHELL (Not for Publication)**
The judgment is affirmed.
BUTZ, J.
We Concur: Scotland, P.J.
 Morrison, J.

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- C045934 THE PEOPLE v. BEAUCHEMIN (Not for Publication)**
The judgment is affirmed.
HULL, J.
We Concur: Blease, Acting P.J.
 Nicholson, J.
- C046125 THE PEOPLE v. CRANE (Not for Publication)**
The trial court is directed to prepare a corrected abstract of judgment to reflect that conduct credits were awarded pursuant to section 4019 and to forward a certified copy to the Department of Corrections. The judgment is affirmed.
HULL, J.
We Concur: Blease, Acting P.J.
 Nicholson, J.
- C046914 THE PEOPLE v. STILLWELL (Not for Publication)**
The judgment is affirmed.
NICHOLSON, J.
We Concur: Sims, Acting P.J.
 Robie, J.
- C044442 ORTEGA v. STATE OF CALIFORNIA et al. (Not for Publication)**
The judgment is affirmed. Costs on appeal are awarded to defendants. (Cal. Rules of Court, rule 27(a).)
NICHOLSON, J.
We Concur: Scotland, P.J.
 Robie, J.
- C045343 In re MICHAEL B.; THE PEOPLE v. MICHAEL B. (Not for Publication)**
The judgment (order committing the minor to CYA) is affirmed.
NICHOLSON, Acting P.J.
We Concur: Morrison, J.
 Hull, J.
- C044657 THE PEOPLE v. BRIGGS (Not for Publication)**
THE COURT:
Defendant's petition for rehearing is denied....
...There is no change in the judgment.
SIMS, Acting P.J.
NICHOLSON, J.
ROBIE, J.

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October 26, 2004, continued

SCOTLAND, P.J.

BUTZ, J.

Raye, J.

October 27, 2004

HULL, J.

I Concur: Morrison, J.

I concur in Parts I, II, and III of the majority opinion...

I would affirm defendant's convictions and remand to the trial court for resentencing.

Sims, Acting P.J.

The one-year enhancement for service of a prior prison term (Pen Code § 667.5, subd. (b)) imposed in Colusa County Superior Court case No. CR42262 will be stricken. The matter is remanded to the superior court with direction to prepare an amended abstract of judgment reflecting the reduction in sentence and to forward a copy thereof to the Department of Corrections. In all other respects, the judgment is affirmed.

HULL, J.

We Concur: Nicholson, Acting P.J.

Raye, J.

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October 27, 2004, continued

- C045459 THE PEOPLE v. SCOTT (Not for Publication)**
The judgment is affirmed.
BUTZ, J.
We Concur: Scotland, P.J.
Morrison, J.
- C046044 THE PEOPLE v. SEABROOKS (Not for Publication)**
The judgment is affirmed.
BUTZ, J.
We Concur: Scotland, P.J.
Morrison, J.
- C042787 SHEPARD, JR., et al. v. FIDELITY NATIONAL TITLE COMPANY OF CALIFORNIA et al. (Not for Publication)**
The judgments are affirmed. Defendants shall recover their costs on appeal. (Cal. Rules of Court, rule 27(a).)
BUTZ, J.
We Concur: Scotland, P.J.
Hull, J.
- C044555 FAIR POLITICAL PRACTICES COMMISSION v. SANTA ROSA INDIAN COMMUNITY OF THE SANTA ROSA RANCHERIA (Certified for Publication)**
The order granting the Tribe's motion to quash is reversed and the case is remanded to the trial court for further proceedings. The parties shall bear their own costs in this appeal. (Cal. Rules of Court, rule 27 (a) (4).)
SIMS, J.
I Concur: Scotland, P.J.
I respectfully dissent....
.... Consequently, I would affirm the order granting the Tribe's motion to quash.
Robie, J.

October 28, 2004

- C044139 THE PEOPLE v. ZWEIGLE (Not for Publication)**
The judgment is affirmed.
MORRISON, J.
We Concur: Blease, Acting P.J.
Butz, J.

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October 28, 2004, continued

- C044283 THE PEOPLE v. SHUPE (Not for Publication)**
We remand and direct the trial court to strike defendant's parole revocation fine. In all other respects, we affirm the judgment.
RAYE, J.
We Concur: Davis, Acting P.J.
Morrison, J.
- C046102 THE PEOPLE v. WHITE (Not for Publication)**
The judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect that the sentence on counts 2, 6 and 7 were imposed concurrently, and to forward a certified copy of the amended abstract to the Department of Corrections.
MORRISON, J.
We Concur: Scotland, P.J.
Hull, J.
- C046208 THE PEOPLE v. LARA (Not for Publication)**
The judgment is affirmed.
MORRISON, J.
We Concur: Scotland, P.J.
Butz, J.
- C046778 THE PEOPLE v. OLES (Not for Publication)**
The judgment is affirmed.
MORRISON, J.
We Concur: Sims, Acting P.J.
Robie, J.

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October 28, 2004, continued

C044857 In re ANDRES M.; THE PEOPLE v. ANDRES M.

(Not for Publication)

The juvenile court's finding of violations of Penal Code section 186.22, subdivision (d), as charged in Counts 1 and 2 of the petition filed March 18, 2003, are reversed and dismissed; Counts 1 and 2 of this petition are sustained, respectively, as battery (Pen. Code § 242) and exhibition of a deadly weapon (Pen. Code, § 417, subd. (a)). As to the petition filed November 3, 2000, the juvenile court's finding of vandalism (Pen. Code, § 594, subd. (a)) as charged in count 1 is reversed and dismissed; the finding the minor violated Penal Code section 186.22, subdivision (d), as charged in Count 2 is reversed and dismissed, and Count 2 is sustained as vandalism (Pen. Code, § 594, subd. (a)). The juvenile court's commitment of the minor to the California Youth Authority and its determination that the minor's maximum period of confinement is 78 months are vacated and the matter is remanded for further proceedings consistent with this opinion.

SIMS, Acting P.J.

We Concur: Raye, J.
 Butz, J.

October 29, 2004

C043459 THE PEOPLE v. BAKER

(Not for Publication)

The judgment is affirmed as to the convictions on counts one through thirty. Defendant's convictions on counts thirty-one through sixty and sixty-two through seventy-four are reversed; the sentence imposed for those convictions vacated, and the restitution orders against defendant in favor of L.L. and C. F. are stricken. The trial court is directed to amend the abstract of judgment and to forward a certified copy of the amended abstract to the Department of Corrections.

ROBIE, J.

We Concur: Scotland, P.J.
 Nicholson, J.

C043821 THE PEOPLE v. NASH

(Not for Publication)

The judgment is affirmed.

MORRISON, J.

We Concur: Scotland, P.J.
 Butz, J.

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October 29, 2004, continued

- C044502 THE PEOPLE v. LEIGHTON (Not for Publication)**
The judgment is reversed and remanded to the trial court. Within seven days of the date the remittitur is filed in the trial court, the prosecutor may charge one or more aggravating circumstances to support imposition of the upper term. If the prosecutor elects not to charge any aggravating circumstances, this matter shall be set for a resentencing hearing to be held in a manner consistent with this opinion.
BUTZ, J.
We Concur: Blease, Acting P.J.
 Davis, J.
- C044644 THE PEOPLE v. RUBIO (Not for Publication)**
The judgment is affirmed.
BUTZ, J.
We Concur: Blease, Acting P.J.
 Davis, J.
- C042328 THOUSAND TRAILS, INC. et al. v. CALIFORNIA RECLAMATION DISTRICT
NUMBER 17 (Not for Publication)**
The judgment is affirmed. District 17 shall recover costs on appeal.
RAYE, J.
We Concur: Scotland, P.J.
 Sims, J.
- C043159 KLOOSTER v. COUNTY OF SAN JOAQUIN et al. (Not for Publication)**
The judgment and order awarding attorney fees and costs are affirmed.
BLEASE, Acting P.J.
We Concur: Sims, J.
 Butz, J.
- C045011 HILLENBRAND, INC., et al. v. INSURANCE COMPANY OF NORTH AMERICA
et al. (Not for Publication)**
The judgment is affirmed.
RAYE, J.
We Concur: Sims, Acting P.J.
 Morrison, J.
- C045382 CORTEZ v. CHANG et al. (Not for Publication)**
The judgment is affirmed. Defendants shall recover their costs on appeal.
(Rule 26 (a).)
ROBIE, J.
We Concur: Davis, Acting P.J.
 Morrison, J.

